

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) JRL-2380-1302 Confirmation No. 1519
	Application Number 10/583,956	Filed February 14, 2008
First Named Inventor LARSSON et al.		
Art Unit 2192	Examiner Kendall, Chuck O.	

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ Applicant/Inventor

☐ Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)

☒ Attorney or agent of record

☐ Attorney or agent acting under 37CFR 1.34.

/John R. Lastova/
Signature

John R. Lastova

Typed or printed name

703-816-4025
Requester's telephone number

July 29, 2011
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*

☒ *Total of **1** form/s are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Larsson et al

Atty. Ref.: 2380-1302; Confirmation No.
8029

Appl. No. 10/583,956

TC/A.U. 2192

Filed: February 14, 2008

Examiner: Kendall, Chuck O.

For: DOWNLOADING AND UPGRADING TERMINAL SOFTWARE OVER THE AIR OF A
WIRELESS DEVICE

* * * * *

July 29, 2011

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Claims 1, 5, 6, 16, 20 and 21 stand finally rejected for anticipation under 35 U.S.C. §102 based on U.S. Patent 5,896,566 to Averbuch. Claims 7-11, 13-15, 22-26, and 28-30 stand finally rejected under 35 U.S.C. §103 based on Averbuch and Coppinger. There are clear errors with the final rejection.

As established early on in the specification at page 1, lines 4-6, the claims are directed to downloading and upgrading terminal software of a radio device over-the-air in an efficient and fail-safe manner. Claim 1 relates to a “communication device [is] arranged to operate in said wireless network and compris[es] a transceiver for receiving said radio software and at least first and second radio access technologies for communication with corresponding access networks of said wireless network.” Non-limiting examples of different radio access technologies (RATs) given in the specification include WCDMA, GSM/GPRS, WLAN, Bluetooth, IEEE 802.11a, or IEEE 802.11b. For example, a first RAT could be a technology that includes software designed

for WLAN that may be used for communication in local hotspots area, while a second RAT could be a technology that includes software designed for WCDMA with continuous coverage. The second WCDMA RAT might used to wirelessly download the WLAN RAT software upgrade to the device.

Clear Error #1: Averbuch Does Not Download the Software Wirelessly

Averbuch is not particularly relevant to the claimed technology, other than indicating the availability of updated software for download to a mobile radio. While the indication that a software update is available is communicated over the radio interface, the actual downloading of the software to the mobile unit takes place by way of a battery charger/software downloader 108. This software download occurs over wires rather than the air interface “to avoid the need to perform expensive software downloads over the air.” See column 2, lines 33-34: “Once aware of the availability of the updated software, the portable wireless communication unit can download the updated software using a combined battery charger/software downloader, thus avoiding the need to perform expensive software downloads over the air.” Averbuch’s wired download of the software is confirmed by the wired RS-232 port data interface described at column 3, lines 44-47: “The charger/downloader interface 210 comprises a connector and power circuitry needed to charge the portable wireless communication unit’s battery (not shown). Furthermore, the charger/downloader interface 210 comprises a data interface (such as RS-232 port) that allows the processing unit 204 to perform downloading of updated software.”

The Examiner responds at page 9 of the FOA by quoting col. 2, lines 10-23. But here the Examiner confuses the wireless software request/query and response with the subsequent download of the actual software itself, which is done via the battery charger/software downloader 108 to “avoid[] the need to perform expensive software downloads over the air.”

Col. 2, lines 33-34. The language of claim 1 cannot be reasonably interpreted to mean that claimed wirelessly downloaded software covers a wired software download.

Claim 1 recites “downloading said radio software via the available radio access technology wirelessly over the air via the available radio access technology” and “storing the downloaded radio software designed for the first radio access technology in a memory.” These features are clearly missing from Averbuch. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scrapps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991). Averbuch does not satisfy this rigorous standard, and therefore, the anticipation rejection must be withdrawn.

Clear Error #2: Averbuch Does Not Teach First and Second RATs

Claim 1 recites that the communication device comprises “at least first and second radio access technologies for communication with corresponding access networks of said wireless network.” The FOA fails to point out where the claimed first and second radio access technologies (RATs) are disclosed in Averbuch. Instead, Averbuch only describes using one RAT, e.g., TDMA or CDMA. Col. 2, lines 47-51.

Nor is there any indication in the FOA where Averbuch teaches “selecting an available one of the first and second radio access technologies for downloading said radio software.” As already explained, Averbuch downloads the software using wire-based technology. But also missing is the claim feature of selecting from two or more RATs. In contrast to Averbuch, the claimed approach avoids the need for specific equipment like a charger to perform the software download.


This missing feature is another independent reason why the anticipation rejection must be withdrawn.

The office action also does not explain how Coppinger remedies the deficiencies of Averbuch with respect to the independent claims. Neither reference teaches using multiple different radio access technologies (RATs) including selecting one of those RATs for use in the wireless software download.

The final rejection should be withdrawn and the case allowed.

Respectfully submitted,
NIXON & VANDERHYE P.C.

By: _____


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